

FILED
3rd JUDICIAL DISTRICT COURT
Dona Ana County
9/15/2021 9:33 AM
DAVID S. BORUNDA
CLERK OF THE COURT
Aldo Garcia Lerma

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT

JOSEPH BELLAND)
)
 Plaintiff,) Cause No. 2021 D-307-CV-2021-02026
) Jury Trial Requested
 v.)
)
 SRS DISTRIBUTION INC.)
)
 Defendant.) *Arrieta, Manuel I.*

PLAINTIFF'S ORIGINAL PETITION AND
NOTICE OF APPEAL OF ORDER OF NON-DETERMINATION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Joseph Belland, Plaintiff, complaining of SRS Distribution Inc.,
Defendant, would allege the following.

DISCOVERY PLAN

1. Discovery in this cause will be conducted under NM.R.Civ.P.Dist.Ct.1-026.

PARTIES

2. The Plaintiff was resident of Dona Ana County, New Mexico at the time of the
discriminatory conduct alleged herein.
3. The Defendant SRS Distribution Inc. is a corporation doing business in New Mexico
and may be served with process by serving its registered agent, Corporation Service
Company, MC-CSC1726 E. Michigan Dr., Ste. 101, Hobbs, New Mexico 88240.

JURISDICTION

4. This action arises under Chapter 28 of the New Mexico Human Rights Act, which

prohibits age discrimination in the workplace.

5. Plaintiff has complied with all necessary administrative prerequisites. Plaintiff timely filed his Charge of Discrimination with the Equal Employment Opportunity Commission, which was simultaneously filed with the New Mexico Human Rights Bureau. Plaintiff received his Order of Non-Determination from the New Mexico Human Rights Bureau. See attached. His Notice of Appeal of the Bureau's Order of Non-Determination and lawsuit was filed within 90 days of issuance. A copy of the Order was sent to the Defendant, and a copy of this lawsuit / notice of appeal, has been served on the bureau.

VENUE

6. This action properly lies in Dona Ana County, New Mexico, where Plaintiff lived and was employed at the time of the unlawful employment practices described in this suit.

FACTS

7. Plaintiff was employed with Defendant since December 1, 2014, and last held the position of Corporate Fleet Manager. Plaintiff enjoyed an outstanding performance history, no disciplinary history and received several performance bonuses. Plaintiff was last employed with Defendant in Las Cruces, New Mexico.
8. On or about March 31, 2020 Plaintiff was furloughed in a temporary furlough due to COVID-19.
9. On or about May 11, 2020 Plaintiff was terminated and was told that his position had been eliminated. Upon information and belief, however, Plaintiff's position was not eliminated and was filled by a younger employee, Steve Bellone, who had no prior experience as a Corporate Fleet Manager.

10. On or about June 11, 2020, Plaintiff applied for an open position of South Regional Safety Manager. Plaintiff was not selected and the position was offered to a younger employee, Aaron Rasmussen, on or about September 2020.
11. In response to Plaintiff's EEOC charge of discrimination, Defendant cited "performance issues" as a reason for Plaintiff's termination and subsequent non-selection, including him having an alleged abrasive and confrontational attitude. Plaintiff, however, was never disciplined for these alleged performance issues and Defendant's proffered reasons for their employment actions are pretextual.

COUNT ONE – AGE DISCRIMINATION: TERMINATION

12. Plaintiff asserts that his age, 57, was a motivating factor and consideration in Defendant's decision to terminate Plaintiff, in violation of the New Mexico Human Rights Act.

COUNT TWO – AGE DISCRIMINATION: NON SELECTION

13. The above allegations are re-alleged and adopted by reference.
14. Plaintiff asserts that his age, 57, was a motivating factor and consideration in Defendant's decision not to select / hire/ or rehire Plaintiff for the South Regional Safety Manager position, in violation of the New Mexico Human Rights Act.
15. Plaintiff requests trial by jury.

WHEREFORE, Plaintiff, respectfully requests that this Honorable Court cites the Defendant to answer and appear, and upon final trial enter a judgment upon his favor and award the following:

1. Declaratory and equitable relief;
2. Back pay and benefits;

3. Reinstatement. If reinstatement is not feasible, front pay and benefits;
4. Compensatory damages;
5. Punitive damages;
6. Attorney's fees;
7. Plaintiff's costs;
8. Prejudgment and post-judgment interest accruing at the maximum rate allowed by law;
9. Such other and further relief as the Court deems necessary, proper and equitable, general or specific, to which Plaintiff may show himself to be justly entitled.

Respectfully submitted,

/s/ John A. Wenke

JOHN A. WENKE
Attorney for Plaintiff
501 E. California Ave.
El Paso, Texas 79902
(915) 351-8877
Fax: (915) 351-9955
NM State Bar No. 154434
lawoffice@johnwenke.com

MICHELLE LUJAN GRISHAM
GOVERNOR



BILL McCAMLEY
SECRETARY

HOWIE MORALES
LT. GOVERNOR

STATE OF NEW MEXICO
DEPARTMENT OF WORKFORCE SOLUTIONS
Labor Relations Division - Human Rights Bureau
1596 Pacheco Street, Suite 103
Santa Fe, NM 87505
Phone: (505) 827-6838

ORDER OF NON-DETERMINATION

September 14, 2021

John Wenke
John A. Wenke Attorney at Law
501 East California Avenue
El Paso, TX 79902

Shannon Straley, Senior Paralegal
SRS Distribution Inc.
7440 State Highway 121
McKinney, TX 75070

**Re: Joseph Belland vs. SRS Distribution Incorporated
EEOC # 453-2021-00243**

Dear Mr. Belland:

As authorized by Section 28-1-10 (D) of the New Mexico Human Rights Act and the Work Sharing Agreement between the Equal Employment Opportunity Commission and the New Mexico Human Rights Bureau, this letter constitutes an Order of Non-Determination as to your complaint. In accordance with Mitchell-Carr, Smith, Vaughn and Herrera v. Office and Professional Employees International Union Local 251, 1999-NMSC-025, ¶ 10, 127 N.M. 282, this Order of Non-Determination is issued to afford you the right to pursue your complaint under the Human Rights Act in state district court.

By issuing this Order of Non-Determination, the Bureau has closed this complaint administratively, with prejudice. Therefore, you may not re-file this complaint with this bureau. You may obtain a new trial; however, by appealing this Order of Non-Determination to the proper district court. According to Section 28-1-13 (A) of the New Mexico Human Rights Act, you have ninety (90) days from the date of service of this Order of Non-Determination to file notice of appeal in the district court of the county where the alleged discriminatory practice occurred or where the respondent does business. The Bureau should not be named as a party to the appeal, unless you have an independent and separate claim against the Bureau. Section 28-1-13 (A) of the Act also requires that you serve a copy of the notice of appeal personally or by certified mail, return receipt requested, at the last known address of all parties. You also must serve a copy of the notice of appeal on the bureau office in Santa Fe. To properly serve the parties, you must comply with any other service of process requirements set forth in the New Mexico Rules of Civil Procedure at 1-004.

IF YOU DO NOT FILE A NOTICE OF APPEAL WITH THE APPROPRIATE DISTRICT COURT WITHIN NINETY (90) DAYS OF YOUR RECEIPT OF THIS ORDER, AND IF YOU DO NOT PROPERLY SERVE THE NOTICE, YOUR RIGHT TO APPEAL THIS ORDER OF NON-DETERMINATION TO THE DISTRICT COURT WILL EXPIRE.

If you have any question concerning this Order of Non-Determination, contact the Human Rights Bureau at 827-6838.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Gallegos".

Jason Gallegos
Lead Investigator